IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 168 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ANIL HIMATRAI MAKWANA - Applicant
Versus
STATE OF GUJARAT & 1 - Respondents

==========

Appearance :

MR KB ANANDJIWALA for Applicant :
MR. I.M. PANDYA, LD. APP for Respondent : 1,
MS JAYSHREE C BHATT for Respondent: 2,
MR MS MACWAN for Respondent: 2,

==========

CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 21/07/2006

ORAL JUDGMENT

1. The petitioner has challenged the order dated 7/2/1996 passed by learned Sessions Judge,

Bhavnagar in Criminal Revision Application No. 122 of 1995, whereby the Sessions Court had quashed and set aside the order of learned JMFC, Ghogha dated 7/4/1995 in Criminal Inquiry Case No. 8 of 1993, disposing off the inquiry case on complainant's unwillingness to prosecute further. The Sessions Court remanded the matter to the Magistrate for hearing the same and dispose it of within 3 months from the date of order, i.e. 7/2/1996.

2. This Court (Coram: S.D. Dave, J) issued rule on 8/5/1996, which was made returnable on 6/7/1996 and granted interim relief in terms of Para-8 (ii), where under the proceedings before learned JMFC, Ghogha in Misc. Criminal Inquiry Case No. 8 of 1993 was ordered to be stayed. The interim relief was ordered to be continued vide order dated 27/2/1997, which has continued till date.

3. The brief facts leading to filing of present revision application deserve to be set out as under.

3.1 On 23/10/1993 one Rajesh Immanuel that is the original complainant of Misc. Criminal Inquiry Case No. 8 of 1993 was assaulted and he filed complaint against the present petitioner and others. It is required to be noted at this stage that the incident of offence came to be registered at Ghogha police station being C.R.

No: I-92/93 for the offences under Section 447, 324, 326, 307 and 323 of I.P. Code. Initially offence under Section 324 and 325 of I.P.Code were registered, however subsequently offence under Section 307 also came to be registered. It is the case of the complainant that one Manharbhai Jasaji had given his land bearing survey No. 84/2 to complainant Immanuel @ Nanubhai Maganbhai for cultivation for a period of 5 years for Rs. 3000=00. The condition was imposed that from the sale proceeds of the crop cultivated, Rs.600=00 were to be retained by Imanual and rest of the amount was to be given to Shri. Manharbhai Jasaji. The said contract was reduced into writing also. After completion of 5 years period, as possession of land was not given back, the case being Tenancy 'Sharat Bhang' Case No. 92-93 came to be filed. Said case came to be finalised in favour of Manharbhai on 26/5/1993. It is alleged that since then Manharbhai and his family members were cultivating said land. The rojkam / panchnama came to be prepared on 5/7/1993 indicating that Manharbhai and his family were in fact cultivating the said land. In the said proceedings signature of the petitioner came to be affixed as witness. On 6/8/1993 said Immanual @ Nanubhai lodged complainant before Ghogha Court against Manharbhai and 22 others including present petitioner. An inquiry was held under Section 202 (2) of Cr.P.C.

Thereafter, learned Magistrate dismissed said complaint being Misc. Case No. 5 of 1993 for offences under Section 447, 427, 331 and 114 of I.P. Code on 10/9/1993 under Section 203 of Cr.P.C. On 21/8/1993 in presence of Talati-Cum-Mantri and Sarpanch the rojkam was prepared. It is to be noted that the incident in question alleged to have taken place on 23/10/1993 in which the present petitioner was also implicated as one of the accused persons.

3.2 The police had commenced the investigation and in the course of investigation it transpired that present petitioner was not present on the scene of offence. One of the witnesses also expressed astonishment regarding involvement of the present petitioner. It was revealed during course of investigation that the present petitioner was serving with Alang Marine Pvt. Ltd., and on the date of incident being Saturday, though was an off day, he had worked over time from 8.00 a.m., onwards. The statement to this effect from Shri. Mukesh Jamubhai of the company had been recorded by the police. There were documentary evidence collected by the police to show that the petitioner had worked in the said factory since 8.00 a.m., onwards on fateful day i.e. 23/10/1993. As the police had collected this material the petitioner was not arrested by the police in connection with the offence registered. Immanuel, the informant

therefore filed complaint on 20/12/1993 before learned Magistrate wherein he has disclosed that the offence is already registered with the concerned police station but as the police was not arresting present petitioner, the complaint had been filed. Learned Magistrate was pleased to pass an order of inquiry under Section 202 Cr.P.C. As this complaint was also subject matter of FIR No. I-92/93 concerned Magistrate called for report under Section 110 of Cr.P.C.

3.3 It is averred in the memo of petition that as the said Shri. Rajesh Immanuel – original complainant and his family members were facing number of trials pending in the court of learned JMFC at Ghogha, both the parties had arrived at a compromise for settling their dispute. Relying upon the compromise the appropriate course of action was taken and cases came to be disposed of. The number of cases have been mentioned in para-4 of memo of the petition which have not been denied or controverted by the respondent, who is represented by learned counsel Ms. Bhatt. Thus, the fact of disposing cases against the complainant has remained uncontroverted. In view of this learned Magistrate, Ghogha passed an order on 7/4/1995 disposing of the inquiry case as he had asserted and recorded that the complainant was not willing to proceed further in the matter. This order of learned Magistrate dated 7/4/1995 in Misc. Criminal Case No. 8 of

1993 was challenged by respondent no.2 in Criminal Revision Application No. 122 of 1995 before the Sessions Court, Bhavnagar. The Sessions Court, Bhavnagar has quashed and set aside the order dated 7/4/1995 passed by learned Magistrate in Misc. Criminal Case No. 8 of 1993 mainly on the ground that learned Magistrate had not heard the complainant on the report under Section 210 of Cr.P.C., and ordered continuance of proceedings and disposal thereof within 3 months from the date of impugned order dated 7/2/1996.

4. Being aggrieved and dissatisfied with the order of Sessions Court, Bhavnagar passed in Criminal Revision Application No. 122 of 1995 dated 7/2/1996 present revision petition is preferred under Section 401 r/w 397/482 of Cr.P.C., on the ground that the order of learned Magistrate dated 7/4/1995 was absolutely appropriate and it was not open to the Sessions Court to reverse the same and/or order continuance of inquiry case.

5. The fact deserves to be noted is that the FIR No. I-92/93 though disclose name of the present petitioner, the investigation thereof revealed no involvement of the petitioner and therefore when the report came to be filed under Section 173 in the form of police chargesheet, the police did not implicate the present petitioner.

Based there on the trial has been concluded and ultimately the guilty have been punished. The fact remains to be noted that the respondent No. 1 or the prosecuting agency did not thought it fit to invoke provision of Section 319 of Cr.P.C., for bringing charge against the present petitioner in the pending trial. Had there been any material sufficient enough to indicate active involvement of present petitioner, then, it was open to the prosecution agency to invoke Section 319 of Cr.P.C. Atleast the informant had a right to move the State agency indicating the material available with him and before the police to take appropriate action under Section 319 of Cr.P.C. There could be an argument against this, that the informant on his own would not have had effective recourse to provision of Section 319 but it goes without saying that the informant can always approach the prosecution agency and furnish them the material and if the prosecution agency is not acting on the material, then, the appropriate action or relief can also be sought for obtaining desired result. Nothing of this from the complainant against such inaction. It is also submitted that even fresh complaint was also not barred. Shri. Anandjiwala, learned counsel for the petitioner placed reliance upon a decision of Punjab & Haryana High Court in case of SITA RAM SON OF DHANI RAM AND ORS. V. SMT. SHAKUNTLA DEVI, 1992 Cri.L.J. 2164 in

support of his contention that once the inquiry against pending case before the Magistrate Court is disposed of then it can not be revived or re-opened.

6. This Court has perused the documents accompanying this matter and copy of police chargesheet produced by Shri. Anandjiwala and also heard Shri. Anandjiwala at length. There is no effective resistance against the revision application as no affidavit-in-reply has been filed. The contentions of Shri. Anandjiwala has not been effectively controverted. This Court, though is of the opinion that the proceedings under Section 210 of Cr.P.C., were ought to have been strictly followed by learned Magistrate as the incident was also being inquired into by the police and it was an offence registered under C.R. No: I-92/93; however looking to the peculiar facts & circumstances prevailing at the relevant time the order of learned Magistrate can not be said to be suffering from any patent infirmity. Learned Magistrate has in fact recorded that, he ascertained from the complainant as to his willingness to proceed with the matter and after asserting unwillingness of the complainant the matter was treated to have been disposed off.

7. The cases filed against the original complainant

– respondent No. 2 have been disposed off in view of the compromise and therefore, he did not show his willingness to go on with the matter before the Ld. Magistrate. Hence the order dated 7/4/1995 came to be passed. In view of this and in view of the fact that there were counter cases which were in fact settled on earlier date and the orders have also been produced on the record of this revision application and these facts have remain uncontroverted, though the respondent is served and is represented by learned counsel, this Court is of the considered view that the order of learned Magistrate ought not to have been interfered with.

8. In the result, this revision application deserves to be allowed and the order of revisional court dated 7/2/1996 passed in Criminal Revision Application No. 122 of 1995 setting aside the order of learned Magistrate is hereby quashed and set aside and the order of learned Magistrate is hereby restored.

9. The revision application is allowed to the aforesaid extent. Rule is made absolute.

[S.R. BRAHMBHATT, J]

/vgn